

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 539 OF 2024

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

B. M. Container Depot Ltd. represented by its Managing Director of Keshabpur, Post Office: Shitalpur (4314), Keshabpur, Police Station- Sitakunda, Chattogram.

.... Petitioner

-Versus-

APM Global Logistics Bangladesh Ltd. represented by its Country Manger of Plot- 76/A, Road-11, Block-M, Banani, Dhaka, 1212 and others.

....Opposite-parties

Mr. Ajmalul Hossain KC, Senior Advocate with
Mr. Muhammad Saifullah Mamun, Advocate

... For the petitioner

Dr. Sharif Bhuiyan with

Mr. Tanim Hussain Shawon, Advocates

...For the opposite-party nos. 1 and 2

Heard and Judgment on 29.05.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the plaintiff in Title Suit No. 102 of 2024, this rule was issued calling upon the opposite-party nos. 1 and 2 to show cause as to why they should not be restrained by an order of injunction for prohibiting the opposite-party nos. 1 and 2 from taking any steps or proceeding further with the present arbitration in the Danish Institute of Arbitration (precisely, DIA) under the rules of Arbitration adopted by the Board of the Danish Institute of Arbitration in Case No. E-3484-1) APM Global Logistics Bangladesh Ltd., 2) Maersk Bangladesh Ltd.-B.M. container Depot Ltd. as there is no arbitration agreement for such arbitration and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, this court also directed the opposite-party nos. 1 and 2 to maintain status quo in respect of taking any steps or proceeding further with the present arbitration in the Danish Institute of Arbitration under the Rules of Arbitration adopted by the Board of the Danish Institute of Arbitration in Case No. E-3484-1) APM Global Logistics Bangladesh Ltd., 2) Maersk Bangladesh Ltd.- B.M. Container Depot Ltd. for a period of 1(one) month and subsequently, on 19.03.2024, it was extended for another 2(two) months.

The salient facts leading to issuance of the instant rule are:

The present petitioner as plaintiff filed the aforesaid suit seeking following reliefs:

“(1) A decree declaring that the rules of Arbitration adopted by the Board of the Danish Institute of Arbitration are not applicable in any dispute arising

out of the Agreement for Container freight Station Services dated 01 January 2021,

(2) A decree declaring that there is no contractual or legal basis for the current arbitration proceedings before the Danish Institute of Arbitration in Case No. E-3484-1) APM Global Logistics Bangladesh Ltd, 2) Maersk Bangladesh Ltd-B.M. Container Depot Ltd.

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(3) A decree declaring that the Arbitration Clause contained at clause 23.2 of the Agreement for Container Freight Station Services dated 01 January 2021 is inoperable and pathological, and therefore void.

(4) A permanent and ad-interim anti-suit injunction prohibiting the Defendant Nos. 1 and 2 from taking any steps or proceeding further with the present arbitration in the Danish Institute of Arbitration under the Rules of Arbitration adopted by the Board of the Danish Institute of Arbitration in Case No. E-3484-1) APM Global Logistics Bangladesh Ltd, 2) Maersk Bangladesh Ltd-B.M. Container Depot Ltd as there is no arbitration agreement for such arbitration.

(5) Any further or other relief to which the plaintiff is entitled to as per law and equity.

(6) An order that the Defendants pay the costs of this Suit on a fully indemnity basis.”

On the date of filing of the suit dated 08.02.2024, the plaintiff also filed another application for temporary injunction under order XXXIX, rule 1 and 2 of the Code of Civil Procedure for injunction prohibiting the defendant nos. 1 and 2 from taking any steps or proceeding further with the present arbitration in the Danish Institute of Arbitration under the rules of Arbitration adopted by the Board of the Danish Institute of Arbitration by initiating Arbitration Case No. E-3484-1) APM Global Logistics Bangladesh Ltd., 2) Maersk Bangladesh Ltd.-B.M. Container Depot Ltd. The said application was taken up for hearing by the learned Joint District Judge, 1st court, Dhaka on 13.02.2024 and issued a show cause notice upon the opposite-party nos. 1 and 2 asking them to explain within 7(seven) days as to why a temporary injunction would not be granted. It is at that stage, the petitioner on 22.02.2024 filed this revisional application and obtained the instant rule and order of status quo as has been stated hereinabove.

Mr. Ajmalul Hossain KC, Senior counsel along with Mr. Muhammad Saifullah Mamun, the learned counsel appearing for the petitioner upon taking us to the revisional application at the very outset submits that, since the Bangladesh courts have supervisory and curial jurisdiction over the arbitral process including to prevent illegality and contractual proceedings as the Bangladesh Arbitration Act, 2001 has been expressly incorporated giving reference in the Arbitration clauses in the

Agreement dated 01.01.2021, the DIA has got no authority to proceed with the case.

The learned counsel further contends that, the impugned order was passed without considering the *prima facie* case of the plaintiff-petitioner and this petitioner has got a fair chance of winning in the suit and for that obvious reason, the impugned order is liable to be set aside as no interim order was passed preventing the DIA from proceeding with the case.

The learned counsel next contends that, the learned Judge of the trial court has failed to consider the exigency of the matter and not considering that if an interim injunction is not passed, the whole purpose of filing the suit will be frustrated and hence, the impugned order is liable to be set aside for ends of justice.

The learned counsel wrapped up his submission contending that, this court may refer the matter to the learned Judge of the trial court to dispose of the original application for injunction by giving a time frame and till that time, the order of status quo passed by this court be directed to be maintained by the trial court.

On the flipside, Dr. Sharif Bhuiyan, the learned counsel appearing for the opposite-party nos. 1 and 2 very robustly opposes the contention taken by the learned senior counsel for the petitioner and contends that, as per the agreement dated 01.01.2021, there has been clear provision for invoking arbitration in clause 23 to the agreement where the DIA has only been empowered to provide administrative support in conducting the arbitration to be hold in accordance with the respective provision of Bangladesh Arbitration Act, 2001 and since that very agreement has been

signed by both the parties so that very agreement to be provided by DIA is absolutely commensurate with the provision of section 25 of the Arbitration Act, 2001 but since these opposite-parties did not get any opportunity to place their case in the trial court either verbally or by filing written objection yet the learned Judge of the trial court has rightly passed the impugned order upon giving a show cause notice to these opposite-parties and therefore, the impugned order is liable to be sustained.

The learned counsel further contends that, since it is agreed by both the parties that the provision of Arbitration Act, 2001 will be applicable and only procedural support will be given by the DIA so there is no dispute among the parties to take resort to clause no. 23 but the learned Judge could not go through the said legal aspect and therefore, he has rightly passed the impugned order which is liable to be sustained. On those counts, the learned counsel finally prays for discharging the rule enabling the trial court to dispose of the original application for injunction on merit and on contest.

We have considered the submission so advanced by the learned senior counsel for the petitioner and that of the opposite-party nos. 1 and 2 and perused the revisional application, the impugned order vis-à-vis the agreement so have been appended with this revisional application as of Annexure-‘C’ series thereof.

Aside from that, we have also gone through the provision so laid down in section 25 of the Arbitration Act, 2001 and that of the clause being clause no. 23 to the agreement dated 01.01.2021. Since all those factums can well be considered by the trial court who has not got the

opportunity to hear the application elaborately from the parties, we are of the considered view that, it would not be wise to pass any observation or make any discussion with regard to the legal proposition as well as the factual aspect placed before us by the learned counsels for the parties that could affect the merit of the original application.

At that, we pose a question to the learned counsel for the opposite-parties that if we direct the trial court to dispose of the said application and till that date, the order of status quo so passed by this court be maintained as has been canvassed by the learned senior counsel for the petitioner, the learned counsel then very candidly submits that, in that case, the opposite-parties will be highly prejudiced and there would have no reason to contest this rule as the suit itself is not maintainable. We have also perused the revisional application and that of the impugned order. To begin with, we find that, by that impugned order, the petitioner had no reason to be aggrieved because the opposite-parties were given 7(seven) days time to explain as to why an order of injunction will not be granted but from the revisional application, we find that, without waiting till that date rather after expiry of 7(seven) days it filed this revisional application without waiting for the opposite-parties to give reply. So in a sense, this revisional application has been filed without giving any opportunity to the opposite-parties to oppose the application. In any case, since the original application has not yet been disposed of on merit and on contest so it would be expedient if we dispose of this revisional application directing the trial court to dispose of the original application by giving a time-frame.

Accordingly, the rule is disposed of.

The order of status quo granted at the time of issuance of the rule stands vacated.

The learned Judge of the trial court is hereby directed to dispose of the application for injunction filed by the plaintiff-petitioner within a period of 15(fifteen) days from the date of receipt of the copy of this order.

Let a copy of this order be communicated to the learned Joint District Judge, 1st Court, Dhaka through **special messenger** with the cost of the office by 02.06.2024.

Md. Bashir Ullah, J:

I agree.